

**CERTIFIED FOR PUBLICATION**  
**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**  
**FOURTH APPELLATE DISTRICT**  
**DIVISION THREE**

THE PEOPLE,

Plaintiff and Respondent,

v.

GERALD ARNOLD KAPLAN,

Defendant and Appellant.

G035385

(Super. Ct. No. 02HF0749)

ORDER MODIFYING OPINION  
AND DENYING PETITION FOR  
REHEARING; NO CHANGE IN  
JUDGMENT

It is ordered that the opinion filed herein on April 4, 2007, be modified as follows:

1. On page 3, delete the first full paragraph beginning “We remand” and insert the following paragraph in its place:

As detailed in the disposition, we remand the matter to the trial court to decide whether a retrospective competency hearing should be held to determine defendant’s competency at the time of trial in November 2003.

2. On page 19, delete the second paragraph beginning “In light of the foregoing” and insert the following paragraph in its place:

Because this might be a case in which a retrospective competency hearing should be held, we remand to the trial court with directions as detailed in the disposition.

3. On page 20, delete the paragraph under the heading “DISPOSITION” and insert the following paragraph in its place:

We reverse the judgment and remand to the trial court with directions to decide whether a retrospective competency hearing should be held to determine whether defendant was competent at the time of trial in November 2003. Should the trial court on remand decide the prosecution has failed to carry its burden of proving that such a retrospective competency hearing should be held, defendant would be entitled to a new trial. If the trial court decides that a retrospective competency hearing should be held, the hearing shall be calendared and held. In the event such a retrospective competency hearing is held and defendant is found to have been competent at the time of trial in November 2003, the trial court shall reinstate the judgment and resentence defendant in accordance with *Cunningham v. California, supra*, 549 U.S. \_\_ [127 S.Ct. 856]. If, after such hearing, defendant is found not to have been competent at the time of trial in November 2003, defendant would be entitled to a new trial.

These modifications do not effect a change in the judgment. The petition for rehearing is DENIED.

FYBEL, J.

WE CONCUR:

SILLS, P. J.

ARONSON, J.